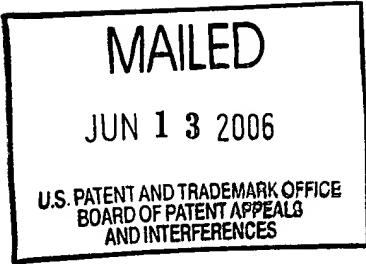


UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES



Ex parte DALE E. GULICK
and
GEOFFREY S. STRONGIN

Application 09/853,443

ORDER RETURNING UNDOCKETED APPEAL TO EXAMINER

This application was received electronically at the Board of Patent Appeals and Interferences on June 12, 2006. A review of the application has revealed that the application is not ready for docketing as an appeal. Accordingly, the application is herewith being electronically returned to the examiner. The matters requiring attention prior to docketing are identified below:

An examination of the Image File Wrapper (IFW) reveals that an Order Returning Undocketed Appeal to Examiner was mailed on March 10, 2006, which requested that a determination be made regarding the status of claims 3, 5, 6, 13, 18, 19, 27, 33, 34, 37, 48, 49, 63, 64, 67 and 74, and that the Examiner's Answer mailed September 16, 2005, be vacated and a new Examiner's Answer issued in compliance with

the new rules which became effective on September 13, 2004 which includes a proper response to the section entitled “Evidence Relied Upon.” In response, a new Examiner’s Answer was mailed on March 22, 2006, which now includes a proper “Evidence Relied Upon” section. However, page 8 of the Examiner’s Answer states:

This examiner’s answer contains a new ground of rejection set forth in section 9 above.

In order to include a new ground of rejection in the Examiner’s Answer, the examiner must follow the guidelines set forth in the training material entitled “Rules of Practice Before the Board of Patent Appeals and Interferences, Final Rule,” located at the following URL:

www.uspto.gov/web/offices/dcom/bpai/fr2004/moreinfo.html

The requirements for a new ground of rejection are:

- 1) Approval by a Technology Center Director or designee; and
- 2) Prominently identified, by a separate heading with all capital letters in

the following sections of the Examiner’s Answer:

Grounds of Rejection to be Reviewed on Appeal section, and

Grounds of Rejection section.

While page 9 of the Examiner’s Answer mailed March 22, 2006 contains the phrase “A Technology Center Director or designee must personally approve the new ground(s) of rejection set forth in section (9) above by signing below,” no Director’s signature is present. It should also be noted that the new ground of rejection is not prominently identified as noted by 2) above. Correction is required.

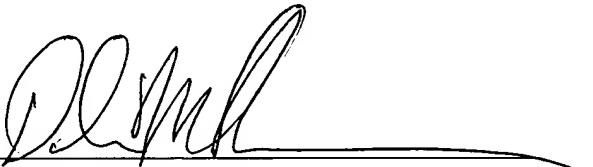
Accordingly, it is

ORDERED that the application is returned to the examiner:

- 1) to issue a revised Examiner's Answer which contains the approval of the Technology Center Director and prominently identifies the new ground of rejection in a separate heading with all capital letters in the "Grounds of Rejection to be Reviewed on Appeal" section" and the "Grounds of Rejection" section;
- 2) to have a copy of any subsequent Examiner's Answer scanned into the IFW;
- 3) for notification to appellants regarding the action taken; and
- 4) for such further action as may be appropriate.

BOARD OF PATENT APPEALS
AND INTERFERENCES

By:



DALE M. SHAW
Deputy Chief Appeal Administrator
(571) 272-9797

DMS:psb

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